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**IN THE
COURT OF APPEALS OF INDIANA**

| | | |
|----------------------|---|-----------------------|
| BRETT LEE COPPLE, |) | |
| |) | |
| Appellant-Defendant, |) | |
| |) | |
| vs. |) | No. 73A01-0610-CR-424 |
| |) | |
| STATE OF INDIANA, |) | |
| |) | |
| Appellee-Plaintiff. |) | |

APPEAL FROM THE SHELBY CIRCUIT COURT
The Honorable Charles D. O'Connor, Judge
Cause No. 73C01-0412-FD-138

AUGUST 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Brett Lee Copple appeals his convictions of theft, a Class D felony, Ind. Code § 35-43-4-2; failure to stop after causing damage to property of another other than a vehicle, a Class B misdemeanor, Ind. Code §§ 9-26-1-4 and -8; and operating a motor vehicle while intoxicated with a prior conviction, a Class D felony, Ind. Code §§ 9-30-5-1 or -2, and -3.

We affirm.

Copple presents one issue for our review, which we restate as: whether there is sufficient evidence to sustain his convictions.

The facts most favorable to the judgment of conviction show that in December 2004, Copple stole the cab of a semi truck in Shelbyville. While driving the semi down the street, Copple ran into several parked vehicles and eventually ran up into a yard and into the porch of a residence. Based upon this incident, Copple was charged with theft, failure to stop after causing damage to property of another other than a vehicle, resisting a police officer, dangerous operation of a motor vehicle while intoxicated, operation of a motor vehicle while intoxicated, operation of a motor vehicle while intoxicated with a prior conviction, driving while suspended, operating a motor vehicle with a controlled substance in the body, and being a habitual substance offender. Following a jury trial and the merging of several offenses, Copple was convicted of theft, failure to stop after causing damage to property of another other than a vehicle, resisting a police officer, and operation of a motor vehicle while intoxicated with a prior conviction. This appeal ensued.

In this direct appeal, Copple appeals only three of his convictions: theft, failure to stop after causing damage to property of another other than a vehicle, and operating a motor vehicle while intoxicated with a prior conviction. He contends that the State failed to present evidence sufficient to support his convictions of these three offenses. Specifically, Copple argues that the State failed to prove beyond a reasonable doubt that he stole or operated a vehicle on the night in question.

Our standard of review with regard to sufficiency claims is well settled. We neither weigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence favorable to the verdict and all reasonable inferences which can be drawn therefrom. *Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997). If there is substantial evidence of probative value from which a trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. *Id.*

In order to prove that Copple failed to stop after an accident causing damage to the property of another other than a vehicle, the State must prove, among other factors, that Copple drove a vehicle. *See* Ind. Code § 9-26-1-4. Similarly, in order to prove that Copple operated a motor vehicle while intoxicated with a prior conviction, the State must prove, among other requirements, that Copple operated a motor vehicle. *See* Ind. Code §§ 9-30-5-1, -2 and -3. Copple challenges the State's evidence on this single element of both offenses because, he asserts, "[t]here is absolutely zero evidence connecting [Copple] to the operation of any vehicle that night." Appellant's Brief at 11.

To operate a vehicle is to drive it or be in actual physical control of it upon a highway. *Custer v. State*, 637 N.E.2d 187, 188 (Ind. Ct. App. 1994). Whether a

defendant has "operated" a vehicle is a question of fact to be determined by examining the surrounding circumstances. *Id.* Further, circumstantial evidence is sufficient to prove that a defendant operated a vehicle while intoxicated. *Jellison v. State*, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995).

Here, the evidence before the trier of fact discloses that the semi roared down a street, crashing into parked cars and eventually running up into a yard and into the front porch of a home. When the semi cab became wedged under the porch, and while the engine was still running, a young man exited the semi and ran from the scene. Michael Wilson and Douglas Crane both testified that they saw a man get out of the truck and run toward the river. Wilson further stated that he saw the man's face, and, at trial, he identified Copple as the man who exited the truck and ran. Crane also testified that there was no one else in the semi cab. The first police officer on the scene testified that Matt Branson, deceased at the time of trial, related to him that a male wearing blue jeans and a black shirt exited the truck and ran toward the river, whereupon Branson heard a splash. The officer went in the direction of the river, as directed by Branson, and encountered Copple by the river wearing blue jeans and a black shirt. Copple was wet and muddy from his waist down to his feet, and, when he saw the officer, he turned away and began to walk back toward the water.

In his brief, Copple claims that the testimony of Wilson, who positively identified him at trial, is unbelievable. However, it is the function of the trier of fact to resolve conflicts in testimony and to determine the credibility of the witnesses. *K.D. v. State*, 754 N.E.2d 36, 39 (Ind. Ct. App. 2001). Therefore, we will not disturb the jury's

determination. Wilson's testimony, as well as reasonable inferences drawn from the evidence, establish a sufficient basis from which the trier of fact could determine that Copple was operating (i.e., driving) the semi cab to sustain his conviction of both failure to stop after an accident causing damage to the property of another other than a vehicle and operating a motor vehicle while intoxicated with a prior conviction.

In addition, Copple avers that the State's evidence was also insufficient to support his conviction for the theft of the semi cab. To convict Copple of theft, the State had to prove that Copple (1) knowingly or intentionally (2) exerted unauthorized control over the property of another person, specifically the semi cab, (3) with the intent to deprive the other person of any part of the property's value or use. *See* Ind. Code § 35-43-4-2(a). It seems that Copple's challenge is to the second element of this offense. He argues that "no one saw [him] enter the semi and/or drive the semi away" from the location where it was parked. Appellant's Brief at 11.

A conviction of theft may be sustained by circumstantial evidence. *Allen v. State*, 743 N.E.2d 1222, 1230 (Ind. Ct. App. 2001), *reh'g denied, trans. denied*. In general, the unexplained possession of recently stolen property is sufficient evidence from which the trier of fact may infer the act of theft. *Buntin v. State*, 838 N.E.2d 1187, 1190 (Ind. Ct. App. 2005). Furthermore, where the length of time between the crime and the possession is short, that fact itself makes the possession recent. *Allen*, 743 N.E.2d at 1230.

In the present case, the evidence most favorable to the verdict reveals that the semi cab involved in this incident was owned by Baylor Trucking and was assigned to one of its employees. On the night in question, the employee parked the truck and went home.

Although no one saw Copple enter the truck and remove it from the place where it was parked, the State presented testimony of Copple's exit from the cab once it had become wedged under the front porch of a residence. As we discussed previously, Wilson identified Copple as the man he saw exit the semi cab. Additionally, the description of the suspect given to the officer by Branson matched the description of the man the police officer apprehended at the river. To summarize, the semi cab, within a short time of its theft, was driven down a city street and wedged into a front porch. Copple, who was then in sole possession of the semi cab, exited the cab and ran. Drawing reasonable inferences from the evidence, we conclude that it forms a sufficient basis from which the trier of fact could determine that Copple exerted unauthorized control over the semi cab.

Based upon the foregoing discussion and authorities, we conclude that the State presented sufficient evidence to support Copple's convictions of theft, failure to stop after causing damage to property of another other than a vehicle, and operating a motor vehicle while intoxicated with a prior conviction.

Affirmed.

ROBB, J., and MATHIAS, J., concur.